

COPY

June 3, 1955.

Attorney General's

Elmer T. Bourque  
Law Assistant

Melvin S. Perkins, Jr. v.  
Perkins Pump & Engine Co., Inc.

Adelard E. Cote, Commissioner  
Department of Labor  
15 Pleasant Street  
Concord, New Hampshire

SEP 22 1998

CONCORD, N.H.

Dear Mr. Cote:

This is in response to your letter of June 1 in which you asked whether minor children of a deceased employee, on adoption, should lose the right to receive further compensation payments as provided in an agreement filed with the Labor Department and approved by the Commissioner. As I understand the situation, the mother of the children remarried and subsequently her new husband adopted the minor dependents.

This poses a difficult question and the answer is by no means clear. It is likely that no matter which way you rule, the question will ultimately be presented to the Superior Court for decision.

It is the opinion of this office that adoption does not deprive the minor dependents of the right to receive further payments under the terms of the existing agreement.

The employer, in support of his position that payments should cease, cites the case of Diamond v. Employers' & Co., 97 N. H., 510. In that instance, the Court ordered that the death of the widow of a deceased employee terminated the employer's duty to make further weekly compensation payments. The statute contained no express provision that payments should be stopped in those circumstances. The Court pointed out, however, that the statute was intended to benefit dependents and that requiring payments be made to the administratrix of the widow would in effect benefit persons who were not dependent upon the deceased. This situation, of course, does not occur in this case - the widow died; the children are very much alive, and will receive the direct benefit of any payments made.

Adoption has the effect of creating a new legal relationship between the adopted children and the adopting parent. Remarriage of a widow also creates a new legal relationship. In the latter case, the Legislature has seen fit to expressly provide that remarriage of the widow terminates her right to receive further compensation payments. Had Legislature intended that adoption

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should also have this effect, it seems that it would have expressly provided to that effect.

Another thought that might support this position is that a ruling that adoption would terminate the right of a minor dependent to receive compensation payments would have the tendency to discourage adoption. This would not appear to be in the interest of minor dependents of deceased employees.

Very truly yours,

Elmer T. Bourque  
Law Assistant

ETB:L